



Dated: April 22, 2005

The following is ORDERED:

A handwritten signature in black ink, reading "Tom R. Cornish", is positioned above a horizontal line.

Tom R. Cornish
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

| | | |
|-----------------------------|---|-------------------|
| IN RE: |) | |
| |) | |
| WILLIAM LEE MUSGROVE |) | Case No. 03-73331 |
| |) | Chapter 13 |
| |) | |
| Debtor. |) | |

ORDER

On the 7th day of March, 2005, the Joint Motion for Order directing Trustee to Turn Over Plan Payments, filed by Linda Davis ("Creditor") and James Conrady, Attorney for the Debtor; and two Objections filed by the Debtor, came on for evidentiary rehearing, pursuant to this Court's Order entered December 20, 2004. Appearances were entered by Bill Barksdale, Attorney for Creditor, William Mark Bonney, Chapter 13 Trustee, and William Lee Musgrove also appeared on his own behalf. After reviewing the testimony and evidence, this Court does hereby enter the following findings and conclusions in conformity with Rule 7052, Fed. R. Bankr. P., in this core proceeding.

This Court previously entered an Order on October 6, 2004, granting in part and denying in part

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the Joint Motion. That Order directed the Trustee to turnover \$500 to Mr. James Conrady as an administrative expense, and further directed the remaining funds held by the Trustee be returned to the Debtor, which totaled \$5,500. The Debtor's bankruptcy case was dismissed on June 25, 2004. This Court found in its Order entered October 6, 2004, that 11 U.S.C. § 1326(a)(2) required the Trustee to return any plan payments to the Debtor after paying any administrative expenses.

Creditor filed a "Motion of Linda Davis for New Trial or Rehearing or Reconsideration" on October 14, 2004. On December 20, 2004, this Court granted Creditor's Motion, setting an evidentiary hearing regarding the turnover of the \$5,500 held by the Trustee. Since December 20, 2004, Debtor filed additional pleadings which appear to relate to the turnover of the funds held by the Trustee, one filed as a Brief on February 24, 2005 (Docket Entry 159) and one titled "Exhibit to Evidentiary Hearing" filed March 7, 2005 (Docket Entry 162). Also on March 7, 2005, Creditor filed "Linda Davis' Reply to Debtor's Response Filed February 24, 2005" (Docket Entry 163).

Section 1326(a)(2) of the Bankruptcy Code provides:

A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable. *If a plan is not confirmed, the trustee shall return any such payment to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.*

11 U.S.C. § 1326(a)(2) (emphasis added). In its October 6, 2004, Order, this Court followed the unambiguous language of the Bankruptcy Code in denying the Creditor's Motion as to the \$5,500. This Court examined a case involving funds held by a trustee, subject to levy by the Internal Revenue Service, following a dismissal of the bankruptcy case. *See In re Beam*, 192 F.3d 941 (9th Cir. 1999). This Court noted, however, that *Beam* involved specific Internal Revenue Code sections which the Court of Appeals

for the Ninth Circuit found to supercede 11 U.S.C. § 1326(a)(2). This Court also noted that the Creditor has state court remedies available.

At the evidentiary hearing, Creditor provided as Exhibit Seven (7) a copy of a document titled “Notice of Child Support Levy.” This document, addressed to William Bonney, is an attempt by Creditor to levy the funds held by the Trustee.

Under ordinary circumstances, pursuant to 11 U.S.C. § 1326(a)(2), once the case is dismissed, the funds being held by the Trustee shall be turned over to the Debtor. This occurs in a typical case. This is not a typical case because the Trustee has received a “Notice of Child Support Levy” from the District Court, 257th Judicial District, Harris County, Houston, Texas, representing child support arrearage that has been reduced to judgment.

The Court is compelled to find that there is an overriding public interest in seeing to it that a legal levy for past due child support from a court of competent jurisdiction is given full faith and credit by this Court. This public policy overrides the clear meaning of the aforementioned statute. In order to satisfy the mandate that the funds be paid to the Debtor, the Court is going to order the Chapter 13 Trustee to make payment to the Debtor and to the Clerk of the District Court, 257th Judicial District, Harris County, Houston, Texas. The effect of this Order is to have the funds deposited in that court in order that the Harris County District Court can make proper disposition of the funds now that the bankruptcy case has been dismissed.

IT IS THEREFORE ORDERED that the Joint Motion for Order directing Trustee to Turn Over Plan Payments is **granted in part and denied in part.**

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